

MONTANA LEGISLATIVE HISTORY

Chapter 332 19 92

Bill H 68 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) Jan 15 ✓ c

Jan 28 ✓ c

Feb 04 ✓ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) Mar 06 ✓ c

Mar 19 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILL NO. 68

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING GOVERNMENTAL LIABILITY FOR TORT DAMAGES TO PERSONS INJURED ON THE PREMISES OF A CORRECTIONAL INSTITUTION WHILE SERVING A SENTENCE IMPOSED UPON CONVICTION OF A CRIME; AMENDING SECTION 2-9-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-108, MCA, is amended to read:

"2-9-108. Limitation on governmental liability for damages in tort. (1) ~~Neither the~~ The state, a county, municipality, taxing district, ~~nor~~ or any other political subdivision of the state is not liable in tort action for damages suffered;

(a) as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence; or

(b) by a person that accrued while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense.

(2) ~~No~~ An insurer is not liable for excess damages unless ~~such~~ the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived."

NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 3. Two-thirds vote required.** Because [section 1] abolishes governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 4. Retroactive Applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to torts that occurred after January 1, 1990.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

-END-

HB 68 INTRODUCED BY MCGEE *LC0415 DRAFTER: MACMASTER*

ABOLISH GOVERNMENTAL LIABILITY FOR NEGLIGENT TORT DAMAGES TO
PERSONS INJURED ON THE PREMISES OF A CORRECTIONAL
INSTITUTION WHILE SERVING A SENTENCE IMPOSED UPON
CONVICTION OF A CRIME

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/19	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO JUDICIARY		
1/07	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/15	HEARING		
1/28	TABLED IN COMMITTEE		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	67	33
2/08	3RD READING PASSED	68	32
	TRANSMITTED TO SENATE		
2/11	FIRST READING		
2/11	REFERRED TO JUDICIARY		
3/06	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/02	2ND READING CONCURRED	45	4
4/03	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	90	7
4/11	3RD READING CONCURRED AS AMENDED	67	29
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 337		
	EFFECTIVE DATE: 04/22/97		

HB 69 INTRODUCED BY HAGENER, ET AL. *LC0497 DRAFTER: CAMPBELL*

ALLOW THE SUBSTITUTION OF THE DEPARTMENT OF REVENUE FOR
DISTRICT CLERKS OF COURT AS TRUSTEE OF TRUSTS FOR
UNLOCATABLE MINERAL OWNERS

12/19	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO LOCAL GOVERNMENT		
1/09	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
1/16	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	63	32
1/27	3RD READING PASSED	79	19
	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO LOCAL GOVERNMENT		
3/04	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	49	1
3/11	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0068, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act abolishing governmental liability for tort damages to persons injured on the premise of a correctional institution while serving a sentence imposed upon conviction of a crime and establishing an immediate effective date.

ASSUMPTIONS:

1. This bill exempts the State of Montana for tort liability for harm to incarcerate inmates.
2. This bill applies retroactively to ongoing tort claims and litigation.
3. The Department of Corrections (DOC) is not able to predict the possibility of future occurrences of harm to inmates.
4. Lower expenditures are anticipated as a result of limitations on state government liability for tort damages. The impact on Department of Administration (DOA), Risk Management Division expenditures is difficult to determine because many lawsuits include tort actions as well as \$1983 (civil rights) claims.
5. From fiscal year 1990 through fiscal year 1995, there were 71 legal actions containing tort allegations filed against the state by persons serving a sentence upon conviction of a crime. Fourteen of these claims contained solely tort allegations and were resolved at a cost of \$21,352, which includes settlements and defense costs.
6. The 57 remaining cases include \$1983 claims. It is impossible to determine the cost attributable solely to the state law claims made in those cases.

FISCAL IMPACT:

While it is impossible to accurately assess the fiscal impact of this bill, the impact will significantly affect costs to the DOC by reducing insurance premiums to DOA, Risk Management Division and reducing litigation costs and the award of damages against the State of Montana as a whole.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local government would also experience savings in insurance premiums, litigation costs and damage awards.

Dave Lewis 1-7-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dan McGee 1/8/97

DAN MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0068, as introduced

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 15, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 24, HB 68, HB 122; POSTED
1/8/97
Executive Action: HB 141, DO PASS

HEARING ON HB 68

Sponsor: REP. DANIEL MC GEE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 3.0 - 6.4; Comments: This is a 60-minute tape.}

Proponents:

RICK DAY, Director, Department of Corrections - EXHIBITS 1 and 2
{Tape: 1; Side: A; Approx. Time Count: 6.5 - 11.4}

RON WATERMAN, Attorney
{Tape: 1; Side: A; Approx. Time Count: 11.6 - 15.6; Comments:
Supported with reservations.}

Opponents:

RUSSELL HILL, Montana Trial Lawyers - EXHIBIT 3
{Tape: 1; Side: A; Approx. Time Count: 15.9 - 22.1}

SCOTT CRICHTON, ACLU
{Tape: 1; Side: A; Approx. Time Count: 22.3 - 24.5}

MIKE COK, Attorney
{Tape: 1; Side: A; Approx. Time Count: 24.7 - Tape 1; Side B;
12.3; Comments: Referenced Judge Mizner's summary judgment.}

ED SHEEHY, Jr., Attorney
{Tape: 1; Side: B; Approx. Time Count: 12.6 - 19.4}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 19.7 - Tape 2; Side A;
8.8; Comments: This is a 90-minute tape.}

EXHIBIT 4

{Tape: 2; Side: A; Approx. Time Count: 8.9 - 16.4; Comments: Mr.
Hill, at the request of Rep. Kottel, proposed an amendment.}

EXHIBIT 5

{Tape: 2; Side: A; Approx. Time Count: 21.5 - 24.1; Comments: Rep.
Sands requested a report from Mr. Crichton which was delivered at
a later date and is included as Exhibit 5.}

{Tape: 2; Side: A; Approx. Time Count: 24.2 - Tape: 2; Side B;
8.0; Comments: Questions continued from the committee.}

Closing by Sponsor: REPRESENTATIVE MC GEE

{Tape: 2; Side: b; Approx. Time Count: 8.1 - 14.1}

HEARING ON HB 122

Sponsor: REP. DANIEL MC GEE

Opening Statement by Sponsor: EXHIBIT 6

{Tape: 2; Side: B; Approx. Time Count: 16.2 - 22.7}

Proponents:

DAVE OHLER, Department of Corrections - EXHIBIT 7
{Tape: 2; Side: B; Approx. Time Count: 22.9 - 27.8}

**Powell County Memorial Hospital**

1101 Texas Avenue • Deer Lodge, Montana 59722
Phone (406) 846-2212 • FAX (406) 846-3074

EXHIBIT 1
DATE 1/15/97
HB 68

January 14, 1997

Mr. Dave Ohler
Department of Corrections
P.O. Box 201301
Helena, MT 59620-1301

RE: HB68

Dear Mr. Ohler;

I would like to take this opportunity to give Powell County Memorial Hospital's (PCMH) support to the Department of Corrections on HB68. As you well know, PCMH currently provides a variety of services to Montana State Prison. Our current contracts include infirmary unit management, Mid-level providers services, and primary care physician services.

The potential of litigation is the most significant issue facing our ability to provide high quality, low cost medical care at Montana State Prison. The enactment of HB68 will reduce the providers fear of being sued over frivolous issues.

I do not believe that HB68 would have any negative affect on the medical care provided at MSP. It should, in fact, enable providers to use the highest quality, most cost effective care in treating the patient without the constant fear of being sued.

Again, Powell County Memorial Hospital strongly supports the enactment of HB68. Please feel free to contact me if you have any questions or comments.

Respectfully,


Tony L. Pfaff,
Chief Executive Officer

January 14, 1997

Testimony
HB 68 and 122
Rick Day
Department of Corrections

Mr. Chairman and Members of the Judiciary Committee, my name is Rick Day and I am the Director of the Department of Corrections. I am here today on behalf of Governor Racicot and the Department in support of HB68 and its companion measure HB122 (similar changes at the federal level). These bills are part of the Department's aggressive efforts to defend against inmate litigation and control spiraling legal costs. More importantly, previous federal prisoner litigation reform legislation, known as PLRA, combined with these two pieces of legislation help the taxpayer, legislature, counties and the Department regain control of our correctional/detention programs.

Specifically, HB 68 would eliminate a state or county inmate's ability to collect monetary damages in State Court for an alleged negligent act. However, an inmate would still have legal recourse including court orders requiring or prohibiting some specific activity (injunctive relief), actions based on federal law and/or brought in federal courts and possible criminal prosecution if the complaint involved felony abuse. Essentially, this change means claims for monetary awards would need to be filed under federal law using a higher standard generally referred to as deliberate indifference or recklessness.

In addition, many of these cases are of questionable merit. However, even with the weak cases the state or county agency must bear the cost of defense. Some recent examples include:

- 1) Inmates who file claims alleging negligence and emotional distress for the failure of the Department to calculate good time credits or calculate sentences accurately;
- 2) An inmate alleging he was falsely imprisoned because his parole was revoked by the Board of Pardons; ,
- 3) The same inmate who alleges negligence for failing to have non-slip surfaces on stairs at Montana State Prison;
- 4) An inmate who alleges emotional distress when his legal mail was inadvertently opened; and
- 5) An inmate who alleges negligence and emotional distress after he was disciplined by an officer when he threatened bodily harm and was insolent to staff.

The retroactive provision of the bill provides further evidence of the benefits of this legislation as there are approximately 10 claims pending alleging over \$1 million in damages which would be negated by HB68. This amount does not include the value of any pending claims against the counties.

The committee will no doubt hear opposing views. However, this bill will not eliminate an inmate's legal recourse nor will it interfere with the legal redress afforded to the private citizen. Instead, the bill provides our legal staff with a tool to help control the spiraling costs of time and money devoted to inmate litigation. We would appreciate your favorable consideration of HB 68.

EXHIBIT 3

DATE 1/15/97

HB 68

Directors:

Wade Dahood
— Director Emeritus
 abeth A. Best
 Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
32 S. Ewing, Suite 312
P.O. Box 838, Helena, Montana 59624
Tel: (406) 443-3124
Fax: (406) 449-6943

Officers:

Gene R. Jarussi
 President
John M. Morrison
 President-Elect
Michael D. Cok
 Vice President
Patricia O. Cotter
 Secretary-Treasurer
William A. Rossbach
 Governor
David R. Paoli
 Governor

January 15, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59624

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to House Bill 68, which would totally and retroactively abolish the government's liability for its fault when prisoners are killed or injured. MTLA opposes HB 68 for numerous reasons, including:

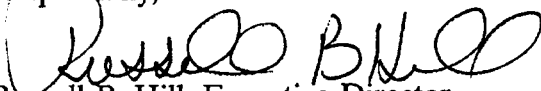
- Section 4, the bill's retroactivity provision, is patently unconstitutional. Period.
- Section 1, which completely immunizes the State from tort liability to prisoners, applies too broadly to both the Department of Corrections and the Montana citizens in its custody.

(1) It immunizes the State not just for carelessness, not even just for outrageous recklessness or callousness, but also for *intentional, criminal* acts. Liability doesn't just compensate victims--it also deters misconduct. But HB 68 would completely insulate the Department of Corrections from legal accountability.

(2) It encompasses *all* prisoners, whether confined unjustly or with just cause, whether confined for a single night or for life, and whether confined for brutal crimes of violence, victimless crimes, carelessness, civil disobedience, even contempt of court. Worse, HB 68 encompasses *all* Montana citizens, not just prisoners--the children, parents, and spouses who can't agree with the Department of Corrections that the life of their still-loved one is literally worthless.

Again, thank you for this opportunity to express MTLA's opposition to HB 68. If I can provide additional information or assistance, I will.

Respectfully,


Russell B. Hill, Executive Director

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1/15/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 1/15/97

BILL NO. HB 68

SPONSOR(S) Rep. Daniel McFee

~~PLEASE PRINT~~

~~PLEASE PRINT~~

~~PLEASE PRINT~~

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mike Cok	Myself		✓
Russell B. Hill	MT Trial Lawyers		✓
Don Dahl	Appl / Admin		
Rob Day	Dept of Corrections	✓	
Dave Ohler	" " "	✓	
Scott Cuckler	ACLU		✓
Ed Sheeky	Self		✓
Ken Waterman	Self	✓ with reservations	✓
Scott Wurster	Self/ACLU		✓
John Maynard	self		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

Motion: REP. MC GEE moved to strike "law enforcement" and insert "criminal justice agency or search and rescue" on page 1 line 26.
{Tape: 2; Side: A; Approx. Time Count: 43.0}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 0.1}

Vote: The motion carried by unanimous vote.

{Tape: 2; Side: B; Approx. Time Count: 2.0}

Motion: REP. ANDERSON moved HB 215 DO PASS AS AMENDED.

{Tape: 2; Side: B; Approx. Time Count: 2.1}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 2.2 - 5.7}

Vote: The motion carried 18 - 2; REPS. SOFT and BOHARSKI voting no.

EXECUTIVE ACTION ON HB 68

Motion: REP. MC GEE moved HB 68 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 6.4; Comments: Exhibits 7 and 8 were distributed just prior to Executive Action.}

These concern
✓ HB 122
EXHIBITS 7 and 8

Motion: REP. MC GEE moved amendments to HB 68.

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 8.2 - 16.5; Comments: REPS. MC GEE and WYATT alternately held the Chair position in absence of Chairman Clark throughout action on this bill.}

Vote: The motion carried by unanimous vote.

{Tape: 2; Side: B; Approx. Time Count: 16.6; Comments: REP. HURDLE voted aye by proxy as reported but copy of proxy was not given to secretary.}

Motion/Vote: REP. MC GEE moved to amend the title as necessary.
The motion carried by unanimous vote.

{Tape: 2; Side: B; Approx. Time Count: 17.1}

Motion: REP. ANDERSON moved to amend HB 68 by removing the retroactive portion of the bill on page 2, lines 5 and 6.

{Tape: 2; Side: B; Approx. Time Count: 18.6 - 19.3; Comments: Chairman Clark resumed the chair.}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 19.4 - Tape 3, Side A; 0.6}

Vote: The vote carried 17 - 3, REPS. MC GEE, CLARK and GRIMES voting no.

{Tape: 3; Side: A; Approx. Time Count: 0.7}

Motion: REP. ANDERSON moved HB 68 DO PASS AS AMENDED.

Motion/Vote: REP. SANDS moved to amend HB 68 on line 18 on page 1 after (b) insert following the word "negligence" ", except damages resulting from medical malpractice,". The motion carried by unanimous vote.

Motion: REP. MC GEE moved HB 68 DO PASS 'AS AMENDED.

Discussion:

{Tape: 3; Side: A; Approx. Time Count: 3.6 - 17.9}

Motion/Vote: REP. ANDERSON moved to Table HB 68. The motion carried 12 - 8, REPS. CLARK, MC GEE, SOFT, AHNER, BERGMAN, GRIMES, TASH, and HANSON voting no.

{Tape: 3; Side: A; Approx. Time Count: 19.0; Comments: REPS. ELLINGSON (aye) and GRIMES (no) voted by proxy.}

Motion/Vote: REP. SOFT moved to adjourn. The motion carried by unanimous vote.

EXECUTIVE ACTION ON HB 68

Motion/Vote: REP. DAN MC GEE moved to reconsider HB 68. The motion passed 12 - 7; REPS. WYATT, HURDLE, MC CULLOCH, PEASE, SANDS, KOTTEL and ELLINGSON voting no. (REPS. SMITH, BERGMAN, HANSON and MOLNAR voted yes by proxy. REP. ELLINGSON voted no by proxy.) {Tape: 1; Side: A; Approx. Time Count: 1.3}

Motion: REP. MC GEE moved to amend HB 68.
{Tape: 1; Side: A; Approx. Time Count: 4.6.}

EXHIBIT 1

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 7.9 - 26.4; Comments: REPS. ELLINGSON, BERGMAN and HANSON arrived at this point in the meeting.}

Motion/Vote: REP. DEB KOTTEL moved to segregate amendments #2 and #6 for vote. The motion to adopt amendments #2 and #6 to HB 68 carried by unanimous voice vote.

Motion: REP. MC GEE moved HB 68 DO PASS AS AMENDED.

Motion: REP. KOTTEL moved a substitute amendment to delete amendment numbers 1, 2, 3, 4, 7, and 8 and language on lines 18, 19, and 20.
{Tape: 1; Side: A; Approx. Time Count: 30.0}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 32.5}

Vote: The motion failed by voice vote.

Motion: REP. MC GEE moved adoption of amendment #5. The motion carried 13 - 4, REPS. KOTTEL, PEASE, HURDLE and SANDS voting no.
{Tape: 1; Side: A; Approx. Time Count: 34.7}

Motion/Vote: REP. MC GEE moved HB 68 DO PASS AS AMENDED. The motion carried 12 - 7, REPS. KOTTEL, SANDS, PEASE, WYATT, ELLINGSON, HURDLE and MC CULLOCH voting no. (REPS. SMITH and MOLNAR voted yes by proxy vote.
{Tape: 1; Side: A; Approx. Time Count: 34.7; Comments: The written proxy votes for this motion were not turned in to the secretary.}

EXECUTIVE ACTION ON HB 44

Motion/Vote: REP. SHIELL ANDERSON moved HB 44 be reconsidered. The motion carried 10 - 6, REPS. WYATT, MC CULLOCH, PEASE, KOTTEL, HURDLE and ELLINGSON voting no.

Motion: REP. DIANE SANDS moved to amend HB 44 EXHIBITS 2 and 3
{Tape: 1; Side: A; Approx. Time Count: 37.5}

EXHIBIT 1
DATE 2/4/97
HB 68

Amendments to House Bill No. 68
First Reading Copy

Requested by Rep. McGee
For the Committee on the Judiciary

Prepared by John MacMaster
January 22, 1997

← Adopted before bill was tabled.

1. Title, line 5.
Following: "LIABILITY FOR"
Insert: "NEGLIGENT"

New
Rep.
McGee

2. Title, line 7.
Following: "CRIME;"
Insert: "PROVIDING A TEST FOR DECIDING A MOTION BY DEFENDANT FOR
DISMISSAL OR FOR SUMMARY JUDGMENT IN A TORT SUIT;"

3. Title, line 8. ← Adopted before bill was tabled.
Following: "DATE"
Strike: "AND A RETROACTIVE APPLICABILITY DATE"

4. Page 1, line 18. ← Adopted before bill was tabled.
Following: "accrued"
Insert: "as a result of negligence on the part of the state or a
political subdivision of the state"

← This exception was adopted
before the bill was tabled.

5. Page 1, line 20.
Following: "offense"
Insert: "except damages resulting from medical malpractice."

New
Rep.
McGee

{ The immunity granted by this subsection (1)(b) does not
extend to gross negligence, willful or wanton misconduct, or
an intentional tort."

6. Page 1, line 25.
Insert: "NEW SECTION. Section 2. Tort suit by prisoner against
state or local government--test for dismissal and summary
judgment. If, on motion of the state or political
subdivision under M.R.Civ.P. 12(b)(6), 12(c), or 56(c), the
judge finds that with respect to a claim against the state
or one of its political subdivisions for tort damages
suffered by claimant while confined or otherwise in or on
the premises of a correctional or detention institution to
serve a sentence imposed upon conviction of a criminal
offense, there is not a sufficient basis in the law for a
reasonable jury to find for claimant with respect to that
claim, the motion must be granted."

New
Rep.
McGee

Renumber: subsequent sections

7. Page 2, line 2.

Following: "liability"

Insert: "for negligent torts"

8. Page 2, lines 5 and 6.

Strike: section 4 of the bill in its entirety

Renumber: subsequent section

Adopted before
the bill was
tabled



HOUSE STANDING COMMITTEE REPORT

February 4, 1997

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 68 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.
Following: "LIABILITY FOR"
Insert: "NEGLIGENT"
2. Title, line 7.
Following: "CRIME;"
Insert: "PROVIDING A TEST FOR DECIDING A MOTION BY A DEFENDANT
FOR DISMISSAL OR FOR SUMMARY JUDGMENT IN A TORT SUIT;"
3. Title, line 8.
Following: "DATE"
Strike: "AND A RETROACTIVE APPLICABILITY DATE"
4. Page 1, line 18.
Following: "accrued"
Insert: "as a result of negligence on the part of the state or a
political subdivision of the state"
5. Page 1, line 20.
Following: "offense"
Insert: ", except damages resulting from medical malpractice.
The immunity granted by this subsection (1) (b) does not
extend to gross negligence, willful or wanton misconduct, or
an intentional tort"

Committee Vote:
Yes 12, No 7.

261532SC.Hgd

82-4-97

February 4, 1997

Page 2 of 2

6. Page 1, line 25.

Insert: "NEW SECTION. Section 2. Tort suit by prisoner against state or local government -- test for dismissal and summary judgment. If, on a motion of the state or political subdivision under Rule 12(b)(6), 12(c), or 56(c), Montana Rules of Civil Procedure, the judge finds that with respect to a claim against the state or one of its political subdivisions for tort damages suffered by a claimant while confined or otherwise in or on the premises of a correctional or detention institution to serve a sentence imposed upon conviction of a criminal offense, there is not a sufficient basis in the law for a reasonable jury to find for the claimant with respect to that claim, the motion must be granted."

Renumber: subsequent sections

7. Page 2, line 2.

Following: "liability"

Insert: "for negligent torts"

8. Page 2, lines 5 and 6.

Strike: section 4 of the bill in its entirety

Renumber: subsequent section

-END-

261532SC.Hgd

HOUSE OF REPRESENTATIVES

7 AM

JUDICIARY COMMITTEE

ROLL CALL

DATE 2/1/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN 7:10	✓		
REP. WILLIAM BOHARSKI 8:05	✓		✓
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON 7:15	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON 7:10	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR 8:05	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 8:00	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HEARING ON HB 68

Sponsor: REP. DAN MCGEE, HD 21, Billings

Proponents: Dave Ohler, Department of Corrections

Opponents: Rus Hill, MTLA
Scott Crichton, ACLU
Ed Sheehy, ACLU

Opening Statement by Sponsor:

{Tape: 2; Side: b; Approx. Time Count: 11:02; Comments: .}

REP. DAN MCGEE, HD 21, Billings, introduced HB 68. Article II, Section 18 of the Montana Constitution states that the state, county, cities, towns, and all other local governmental entities shall have no immunity from suit or injury to a person or property except as may be specifically provided by law by a two-thirds vote of each house of the legislature. This bill is attempting to limit the state from suits for simple negligence by inmates in the state prison. They currently have in the bill, for medical malpractice, the immunity granted by this section. The term they will be using is "deliberate indifference". They will still be able to sue for an intentional tort and 1983 civil rights claims under federal court. The contentious part of the bill in the House was found on page 2, section 4, which was the retroactivity date. That has been amended out of the bill.

Proponents' Testimony:

Dave Ohler, Department of Corrections, spoke in support of HB 68. This is an attempt to get a handle on inmate litigation. President Clinton has signed the Prison Litigating Reform Act in April which put some limits on the ability of inmates to bring lawsuits in the federal court. The state has introduced HB 68 and HB 122 which deal with inmate litigation. HB 68 requires a two-thirds vote.

The original bill would prohibit people in local jails, who have been adjudicated as committing a criminal offense, from suing the state or local government for torts. The bill was amended in the House to limit that to simple negligence. He referred to his amendments, **EXHIBIT 4**. The House amendments stated that state or local government employees are immune from suit for simple negligence and then there is a long laundry list of exclusions which include gross negligence, willful or wanton misconduct, medical malpractice or an intentional tort. His amendments incorporate the standard used by federal courts when deciding civil rights issues and that standard is deliberate indifference.

With respect to inmates, they are putting the standard of proof on an equivalent level with the federal government. Another amendment made by the House is found on page 2, new section 2,

which created a somewhat higher standard when inmates are bringing suit. The higher standard related to motions to dismiss which were filed at the initial pleading stage and also to include Rule 56 which is motions for summary judgment. It would state that there is not clear and convincing evidence to find for the claimant with respect to the claim. In the last six years, the Department has defended 700 suits, over half are for damages. There have been two cases which have made it to a trial where an inmate has been awarded damages. The remainder have been settled prior to trial.

Opponents' Testimony:

{Tape: 2; Side: b; Approx. Time Count: 11:12; Comments: .}

Rus Hill, MTLA, spoke in opposition of HB 68. The amendments apply the same standards which are used in federal courts for civil rights violations. Civil rights violations are intentional acts thus deliberate indifference does not have a relation to the negligent standard. The negligent standard is a sliding scale standard.

The Department of Corrections wanted to protect themselves from their negligence which resulted in the deaths and serious injuries of prisoners who died in the prison riots. Juries don't look at prisoners and have bleeding hearts to give monies to prisoners. They can look at facts. There was only one Republican who voted against this bill on the House floor. REP. BOHARSKI spoke of an incident in his county where someone convicted of a DUI was put in the same cell as Ronnie Saddler and was killed. This bill says the king can do no wrong.

There are terrible equal protection problems in this bill. This bill says there is a difference between prisoners and everyone else. This bill treats prisoners in state run correctional facilities differently than prisoners in private correctional facilities. This bill tells the judicial system to adopt a different standard for summary judgment motions when prisoners are involved. The Montana Constitution does not allow denying equal protection to persons. A corporate person can never be put in jail.

HB 68 would reach all deaths or injuries to anyone who is in the custody of the state for a sentence imposed upon conviction of a criminal offense. It doesn't take into consideration the age, sex, seriousness of the offense, etc. This bill reaches the losses suffered by children, parents and spouses of people in custody. EXHIBIT 5, written testimony of Russell Hill.

Scott Crichton, ACLU, stated that there are times when people are responsible and need to be held responsible. Inmates do not give up every human right they have when they enter the prison gates. The state cannot expect to be free from being held responsible.

Ed Sheehy, ACLU, stated he is appointed by federal and state judges to represent inmates on lawsuits they have filed pro se against the state of Montana. Approximately two years ago there was a settlement reached between the ACLU and the Department of Corrections on a conditions lawsuit over the conditions at Montana State Prison. There is now improved medical care at the prison. At the time the lawsuit was filed, there were 60 people on a waiting list to see the dentist. Dental care at the prison has improved. It is more difficult for an inmate to bring a suit in federal court. If this legislation passes and a jail puts a DUI inmate in with someone convicted of homicide, they will not have any responsibility if the DUI inmate is beaten or killed unless it can be established that they knew or should have known that it was going to happen. Montana State Prison transports a lot of prisoners. If there were a car accident and the inmate was injured, under this legislation, he could not recover. The Montana Constitution provides access to the courts. Where do we draw the line? Will this mean that only inmates cannot sue? This legislation tells the court how to rule on litigation in front of it.

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 11:32; Comments: .}

SEN. GROSFIELD was concerned about an equal protection problem involved with the limited liability applying to a DUI offender, or someone awaiting trial who had not been convicted.

Mr. Ohler stated that the bill recognizes that persons who have been convicted of criminal offenses have fewer rights than people who have not been convicted.

SEN. BARTLETT asked **Mr. Ohler** who was involved in deciding that this legislation was the approach which needed to be taken?

Mr. Ohler stated that inmates forum shop. HB 68 and HB 122 sought to narrow down the forums and keep the primary forum as the federal courts.

SEN. BARTLETT questioned whether anyone outside the Department was involved in this legislation?

Mr. Ohler stated the Department of Corrections drafted the legislation without consulting others.

SEN. ESTRADA asked who was involved in discussions with the Department after the bill was drafted?

Mr. Ohler stated they discussed the legislation with the Risk Management Tort Defense Division and the Department of Justice.

SEN. HOLDEN asked how many lawsuits were filed last year?

Mr. Ohler stated they had 85 to 100 actions filed last year.

SEN. HOLDEN asked how many pending complaints they had?

Mr. Ohler stated their open/active files would number 150 to 200.

SEN. HOLDEN asked how many inmates there were?

Mr. Ohler answered there were 1300 inmates at Montana State Prison, 70 inmates at the Women's Correctional Center, and 20 to 30 inmates at the Swan River Boot Camp.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Count: 11:35; Comments: .}

REP. MCGEE asked what was the protection for the citizens of Montana? He felt it would be the elected representatives. Prisoners have their representation. A suit filed by an inmate is against the citizens of the State of Montana. Inmates who are injured on the job are covered. This bill does not limit access to the courts. It limits the liability the State of Montana will occur as a result of their access to the courts. The prisoners have treated society as second class citizens. Montana citizens are the second victim of crime. They pay for the inmate's housing, education, treatment, skill development, food, medical care, dental care, defense attorneys, etc.

Amendments to House Bill No. 68
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Dave Ohler of DOC (put into form by Valencia Lane)
March 6, 1997

1. Title, line 8.

Following: "DEFENDANT FOR"Strike: "DISMISSAL OR FOR"

2. Page 1.

Following: line 12

Insert: "WHEREAS, persons convicted of a criminal offense have greater rights to bring a legal action against the state of Montana and its employees in state court than is available for actions brought under federal law; and

WHEREAS, the Legislature wishes to equalize the availability of legal remedies for persons convicted of a criminal offense in state court with the remedies available in federal court; and

WHEREAS, the United States Supreme Court had held that negligence is insufficient to hold a state official or employee liable for violations of and inmate' federal rights; and

WHEREAS, the United States Supreme Court in Farmer v. Brennan, 114 S.Ct. 1970 (1994), held that state officials and employees are liable only if they acted with deliberate indifference."

3. Page 1, lines 23 through 25.

Following: "FROM" on line 23Strike: remainder of line 23 through "MISCONDUCT." on line 25

Insert: "deliberate indifference"

4. Page 2, line 3.

Following: "RULE"Strike: "12(B)(6), 12(C), OR"

5. Page 2, lines 7 and 8.

Following: "IS NOT" on line 7Strike: remainder of line 7 through "JURY" on line 8

Insert: "clear and convincing evidence"

Directors:

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 Director Emeritus
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 L. Randall Bishop
 Michael D. Cok
 Mark S. Connell
 Michael W. Cotter
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 James P. Molloy
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 Gregory S. Munro
 David R. Paoli

Montana Trial Lawyers

ASSOCIATION

Russell B. Hill, Executive Director
 32 S. Ewing, Suite 312
 P.O. Box 838, Helena, Montana 59624
 Tel: (406) 443-3124
 Fax: (406) 449-6943

March 6, 1997

Sen. Bruce Crippen, Chair
 Senate Judiciary Committee
 Room 325, State Capitol
 Helena, MT 59624

RE: House Bill 68

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to H.B. 68, which would abolish governmental accountability for deaths and injuries to prisoners within its care. MTLA opposes H.B. 68 for numerous reasons, including:

* The bill immunizes the State and its subdivisions from responsibility for reasonable care of the Montana citizens within its custody. The duty of reasonable care which a negligence standard imposes upon the government--and which H.B. 68 abolishes (page 1, lines 20-21)--is a "sliding scale" standard which already makes allowances for the special facts and circumstances surrounding state custody of prisoners.

* In numerous ways, the bill (at page 1, line 20) subjects "persons" to unequal protection of the laws. For example, the bill does not immunize private correctional/detention facilities with which the State contracts, and thus the bill subjects similarly-situated prisoners to dramatically different "punishments" (i.e., surrender of civil rights) at the unfettered discretion of the State which prosecuted them. Likewise, the bill (at page 2, lines 1-9) imposes upon the judicial branch a separate legal standard for determining dismissal and summary judgment motions by prisoners. Likewise, corporate "persons"--unlike human beings--can never be "confined in or . . . otherwise in or on the premises of a correctional or detention facility to serve a sentence . . ." and thus surrender no civil protections under H.B. 68 as part and parcel of their their criminal sentences.

* The bill inescapably distinguishes between

governmental entities (page 1, lines 20-21) and their officers/agents/employees (page 1, line 18) in erecting different standards of care applicable to each. The bill also distinguishes between intentional torts committed by government and intentional torts committed by governmental employees. Aside from employment and agency issues such as respondeat superior, MTLA believes that such inescapable distinctions in H.B. 68 create a new category of governmental liability unlimited by the liability caps in Sec. 2-9-108(1)(a), MCA.

* The bill applies to all deaths and injuries to human prisoners "serving a sentence imposed upon conviction of a criminal offense": whether young or old, male or female; whether in prison for life, in a county jail for a single night, or merely in the course of a "tough love" visit ordered by a judge; whether confined for brutal crimes of violence, victimless crimes, carelessness, civil disobedience, even contempt of court; and perhaps most importantly, whether or not the victims of a death or injury also include the children, parents or spouses of a still-loved-one in custody.

Again, thank you for this opportunity to express MTLA's opposition to H.B. 68. If I can provide additional information or assistance, I will.

Respectfully,

A handwritten signature in dark ink, appearing to read "Russell B. Hill". The signature is fluid and cursive, with the first name "Russell" being more prominent and the last name "Hill" following in a similar style.

Russell B. Hill, Executive Director

3/6/97

DATE

SEN:1995
wp.rollcall.man
CS-09

CS-09

DATE _____

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY:

 $\angle \blacksquare \angle$ $\angle \blacksquare \angle$

Name _____

Representing

Bill
No.

Support

Oppose

Norma Jean Bales

Dept of Corr

268

Provide
1WA

Sandy Heston

18 10 11

268

11

Scott Cluck

ALL

268, 111
68

X

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

accepted banking practices, as computer and fax records can be tampered with more easily than hand-written documents. Technology is not well-defined yet as to how they will be secured. So, I feel the need to be a bit cautious. **ACTING CHAIRMAN WALTER MCNUTT.** Securities have been done electronically for years, so I don't see a problem with this.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO STRIKE "5" ON PAGE 67, LINE 26 AND INSERT "8". THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. RIC HOLDEN MOVED HB 426 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

SEN. HALLIGAN will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 231

Discussion: SEN. ESTRADA. I am having difficulty with Sections 19 and 20 of this bill, and am asking for some time to speak with Judge Larson on this. Maybe I don't understand, or am too cautious. It looks like we're making the State of Montana a parent.

EXECUTIVE ACTION ON 68

Motion: SEN. HOLDEN MOVED HB 68 BE CONCURRED IN AS PREVIOUSLY AMENDED.

Amendments: SEN. SUE BARTLETT. I asked Valencia Lane to draft the amendments hb06805.avl to add "serious bodily injury or death resulting from negligence", and this is incorporated on page 2, line 5 of the new gray bill attached to these amendments (EXHIBITS #7 and #8).

Motion/Vote: SEN. BARTLETT MADE A SUBSTITUTE MOTION TO ADOPT ONLY #7 OF THE AMENDMENTS IN sb06805.avl. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. HOLDEN WHO VOTED NO.

Discussion: SEN. HOLDEN. I believe we did a good job on the bill as amended now, so I withstand SEN. BARTLETT's amendment.

SEN. DOHERTY. The Department of Corrections said they don't want to mess with inconsequential problems, and I believe this amendment meets their wishes and our need to represent the State.

VICE CHAIRMAN GROSFIELD. The Department had earlier offered an amendment very similar to this, and it seems this approach is a middle ground. If there is a death that is something that, as a matter of public policy, we need to be concerned with. I don't believe this small change will hurt the bill that much, so I would go along with the amendment.

Motion/Vote: SEN. HOLDEN MOVED HB 68 BE CONCURRED IN AS AMENDED.
THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN.
DOHERTY WHO VOTED NO.

SEN. CRIPPEN advised the Committee that they would look at
proposed amendments to HB 203 before taking executive action on
the bill.

Amendments to House Bill No. 68
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 19, 1997

1. Title, lines 7 and 8.

Following: "CRIME;" on line 7

Strike: remainder of line 7 through "SUIT;" on line 8

2. Page 1, line 17.

Following: "suffered"

Strike: ":"

3. Page 1, line 18.

Strike: "(a)"

4. Page 1, line 19.

Following: "occurrence"

Strike: "; or"

Insert: "."

5. Page 1, lines 20 and 21.

Strike: "(b) by a person that accrued AS A RESULT OF NEGLIGENCE
ON THE PART OF THE STATE OR A POLITICAL SUBDIVISION OF THE
STATE"

Insert: "(2) The state, a county, municipality, taxing district,
or any other political subdivision of the state is not
liable in tort action for insubstantial damages suffered as
a result of negligence of an officer, agent, or employee of
that entity by a person"

added
to
6804.0

6. Page 1, line 23.

Following: "offense"

Strike: ", EXCEPT DAMAGES RESULTING FROM MEDICAL MALPRACTICE"

7. Page 1, line 24.

Strike: "(1)(B)"

Following: "TO"

Insert: "serious bodily injury or death resulting from negligence
or to damages resulting from medical malpractice,"

added
to
6804.0

8. Page 1, line 25.

Following: "TORT."

Insert: "This subsection does not create an exception from the
dollar limitations provided for in subsection (1)."

9. Page 1, line 26.

Strike: "(2)"

Insert: "(3)"

10. Page 2, lines 1 through 9.

Strike: section 2 in its entirety
Renumber: subsequent sections

House Bill No. 68

Introduced By mcgee

By Request of the Department of Corrections

" GRAY Bil
for 6805
hb006807
(adopted by
comm.)

A Bill for an Act entitled: "An Act abolishing governmental liability for NEGLIGENT tort damages to persons injured on the premises of a correctional institution while serving a sentence imposed upon conviction of a crime; ~~PROVIDING A TEST FOR DECIDING A MOTION BY A DEFENDANT FOR DISMISSAL OR FOR SUMMARY JUDGMENT IN A TORT SUIT~~; amending section 2-9-108, MCA; and providing an immediate effective date and a retroactive applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-108, MCA, is amended to read:

"2-9-108. Limitation on governmental liability for damages in tort. (1) ~~Neither the~~ The state, a county, municipality, taxing district, ~~nor or~~ any other political subdivision of the state is not liable in tort action for damages suffered:

~~(a)~~ as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence; ~~or~~ .

~~(b) by a person that accrued AS A RESULT OF NEGLIGENCE ON THE PART OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE~~

(2) THE STATE, A COUNTY, MUNICIPALITY, TAXING DISTRICT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS NOT LIABLE IN TORT

INSUBSTANTIAL
ACTION FOR DAMAGES SUFFERED AS A RESULT OF NEGLIGENCE OF AN

OFFICER, AGNET, OR EMPLOYEE OF THAT ENTITY BY A PERSON while the

NOTE: YOU CAN
AMEND THIS
GRAY Bil
you must
amend
hb0068
680

1 person was confined in or was otherwise in or on the premises of
2 a correctional or detention institution or facility to serve a
3 sentence imposed upon conviction of a criminal offense, EXCEPT
4 DAMAGES RESULTING FROM MEDICAL MALPRACTICE. THE IMMUNITY GRANTED
5 BY THIS SUBSECTION (1)(B) DOES NOT EXTEND TO DAMAGES RESULTING
6 FROM MEDICAL MALPRACTICE, GROSS NEGLIGENCE, WILLFUL OR WANTON
7 MISCONDUCT, OR AN INTENTIONAL TORT. THIS SUBSECTION DOES NOT
8 CREATE AN EXCEPTION FROM THE DOLLAR LIMITATIONS PROVIDED FOR IN
9 SUBSECTION (1).

*serious bodily injury or death
result from negligence*

10 (2)(3) No An insurer is not liable for excess damages
11 unless such the insurer specifically agrees by written
12 endorsement to provide coverage to the governmental agency
13 involved in amounts in excess of a limitation stated in this
14 section, in which case the insurer may not claim the benefits of
15 the limitation specifically waived."

16
17 NEW SECTION. SECTION 2. TORT SUIT BY PRISONER AGAINST
18 STATE OR LOCAL GOVERNMENT -- TEST FOR DISMISSAL AND SUMMARY
19 JUDGMENT. IF, ON A MOTION OF THE STATE OR POLITICAL SUBDIVISION
20 UNDER RULE 12(B)(6), 12(C), OR 56(C), MONTANA RULES OF CIVIL
21 PROCEDURE, THE JUDGE FINDS THAT WITH RESPECT TO A CLAIM AGAINST
22 THE STATE OR ONE OF ITS POLITICAL SUBDIVISIONS FOR TORT DAMAGES
23 SUFFERED BY A CLAIMANT WHILE CONFINED OR OTHERWISE IN OR ON THE
24 PREMISES OF A CORRECTIONAL OR DETENTION INSTITUTION TO SERVE A
25 SENTENCE IMPOSED UPON CONVICTION OF A CRIMINAL OFFENSE, THERE IS
26 NOT A SUFFICIENT BASIS IN THE LAW FOR A REASONABLE JURY TO FIND
27 FOR THE CLAIMANT WITH RESPECT TO THAT CLAIM, THE MOTION MUST BE
28 GRANTED.

1 NEW SECTION. Section 3-4. Severability. If a part of
2 [this act] is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of [this act] is
4 invalid in one or more of its applications, the part remains in
5 effect in all valid applications that are severable from the
6 invalid applications.

7
8 NEW SECTION. Section 4-5. Two-thirds vote required.
9 Because [section 1] abolishes governmental liability FOR
10 NEGLIGENT TORTS, Article II, section 18, of the Montana
11 constitution requires a vote of two-thirds of the members of each
12 house of the legislature for passage.

13
14 ~~NEW SECTION. Section 4. Retroactive Applicability. [This~~
15 ~~act] applies retroactively, within the meaning of 1 2 109, to~~
16 ~~torts that occurred after January 1, 1990.~~

17
18 NEW SECTION. Section 5-6. Effective date. [This act] is
19 effective on passage and approval.

20 -END-

COURT NO. 8House Bill No. 68 7-19-97Introduced By McGee HB 68GRAY Bill
for

By Request of the Department of Corrections

hb006804.a
(adopted by Ju
comm.)

A Bill for an Act entitled: "An Act abolishing governmental liability for NEGLIGENT tort damages to persons injured on the premises of a correctional institution while serving a sentence imposed upon conviction of a crime; ~~PROVIDING A TEST FOR DECIDING A MOTION BY A DEFENDANT FOR DISMISSAL OR FOR SUMMARY JUDGMENT IN A TORT SUIT~~; amending section 2-9-108, MCA; and providing an immediate effective date and a retroactive applicability date."

Be it enacted by the Legislature of the State of Montana: **NOTE: YOU CAN NOW AMEND THIS GRAY BILL, YOU MUST AMEND hb006804.**

Section 1. Section 2-9-108, MCA, is amended to read:

"2-9-108. Limitation on governmental liability for damages in tort. (1) Neither the The state, a county, municipality, taxing district, ~~nor~~ or any other political subdivision of the state is not liable in tort action for damages suffered;

~~(a)~~ as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence; ~~or~~ .

~~(b) by a person that accrued AS A RESULT OF NEGLIGENCE ON THE PART OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE~~

(2) THE STATE, A COUNTY, MUNICIPALITY, TAXING DISTRICT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE IS NOT LIABLE IN TORT

ACTION FOR DAMAGES SUFFERED AS A RESULT OF NEGLIGENCE OF AN

OFFICER, AGNET, OR EMPLOYEE OF THAT ENTITY BY A PERSON while the

1 person was confined in or was otherwise in or on the premises of
2 a correctional or detention institution or facility to serve a
3 sentence imposed upon conviction of a criminal offense, EXCEPT
4 DAMAGES RESULTING FROM MEDICAL MALPRACTICE. THE IMMUNITY GRANTED
5 BY THIS SUBSECTION (1)-(B) DOES NOT EXTEND TO DAMAGES RESULTING
6 FROM MEDICAL MALPRACTICE, GROSS NEGLIGENCE, WILLFUL OR WANTON
7 MISCONDUCT, OR AN INTENTIONAL TORT. THIS SUBSECTION DOES NOT
8 CREATE AN EXCEPTION FROM THE DOLLAR LIMITATIONS PROVIDED FOR IN
9 SUBSECTION (1).

10 (2)(3) No An insurer is not liable for excess damages
11 unless such the insurer specifically agrees by written
12 endorsement to provide coverage to the governmental agency
13 involved in amounts in excess of a limitation stated in this
14 section, in which case the insurer may not claim the benefits of
15 the limitation specifically waived."

16
17 NEW SECTION. SECTION 2. TORT SUIT BY PRISONER AGAINST
18 STATE OR LOCAL GOVERNMENT -- TEST FOR DISMISSAL AND SUMMARY
19 JUDGMENT. IF, ON A MOTION OF THE STATE OR POLITICAL SUBDIVISION
20 UNDER RULE 12(B)(6), 12(C), OR 56(C), MONTANA RULES OF CIVIL
21 PROCEDURE, THE JUDGE FINDS THAT WITH RESPECT TO A CLAIM AGAINST
22 THE STATE OR ONE OF ITS POLITICAL SUBDIVISIONS FOR TORT DAMAGES
23 SUFFERED BY A CLAIMANT WHILE CONFINED OR OTHERWISE IN OR ON THE
24 PREMISES OF A CORRECTIONAL OR DETENTION INSTITUTION TO SERVE A
25 SENTENCE IMPOSED UPON CONVICTION OF A CRIMINAL OFFENSE, THERE IS
26 NOT A SUFFICIENT BASIS IN THE LAW FOR A REASONABLE JURY TO FIND
27 FOR THE CLAIMANT WITH RESPECT TO THAT CLAIM, THE MOTION MUST BE
28 GRANTED.
29

1 NEW SECTION. Section 3-4. Severability. If a part of
2 [this act] is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of [this act] is
4 invalid in one or more of its applications, the part remains in
5 effect in all valid applications that are severable from the
6 invalid applications.

7
8 NEW SECTION. Section 4-5. Two-thirds vote required.
9 Because [section 1] abolishes governmental liability FOR
10 NEGLIGENT TORTS, Article II, section 18, of the Montana
11 constitution requires a vote of two-thirds of the members of each
12 house of the legislature for passage.

13
14 ~~NEW SECTION. Section 4. Retroactive Applicability.~~ [This
15 act] ~~applies retroactively, within the meaning of 1-2-109, to~~
16 ~~torts that occurred after January 1, 1990.~~

17
18 NEW SECTION. Section 5-6. Effective date. [This act] is
19 effective on passage and approval.

20 -END-

Amendments to House Bill No. 68
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 14, 1997

1. Title, lines 7 and 8.

Following: "CRIME;" on line 7

Strike: remainder of line 7 through "SUIT;" on line 8

2. Page 1, line 17.

Following: "suffered"

Strike: "i;"

3. Page 1, line 18.

Strike: "(a)"

4. Page 1, line 19.

Following: "occurrence"

Strike: "i; or"

Insert: "."

5. Page 1, lines 20 and 21.

Strike: "(b) by a person that accrued AS A RESULT OF NEGLIGENCE
ON THE PART OF THE STATE OR A POLITICAL SUBDIVISION OF THE
STATE"

Insert: "(2) The state, a county, municipality, taxing district,
or any other political subdivision of the state is not
liable in tort action for damages suffered as a result of
negligence of an officer, agent, or employee of that entity
by a person"

6. Page 1, line 23.

Following: "offense"

Strike: ", EXCEPT DAMAGES RESULTING FROM MEDICAL MALPRACTICE"

7. Page 1, line 24.

Strike: "(1)(B)"

Following: "TO"

Insert: "damages resulting from medical malpractice,"

8. Page 1, line 25.

Following: "TORT."

Insert: "This subsection does not create an exception from the
dollar limitations provided for in subsection (1)."

9. Page 1, line 26.

Strike: "(2)"

Insert: "(3)"

10. Page 2, lines 1 through 9.

Strike: section 2 in its entirety

Renumber: subsequent sections

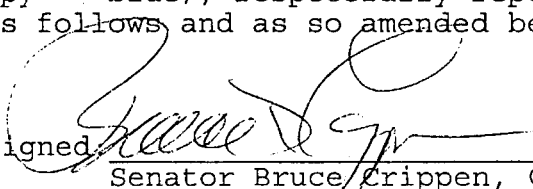


SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 19, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 68 (third reading copy -- blue), respectfully report that House Bill 68 be amended as follows and as so amended be concurred in.

Signed 

Senator Bruce Crippen, Chair

That such amendments read:

1/ Title, lines 7 and 8.

Following: "CRIME;" on line 7

Strike: remainder of line 7 through "SUIT;" on line 8

2. Page 1, line 17.

Following: "suffered"

Strike: "i;"

3. Page 1, line 18.

Strike: "a"

4. Page 1, line 19.

Following: "occurrence"

Strike: ";or"

Insert: "."

5. Page 1, lines 20 and 21.

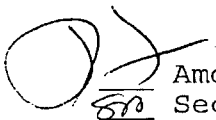
Strike: "(b) by a person that accrued AS A RESULT OF NEGLIGENCE ON THE PART OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE"

Insert: "(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person"

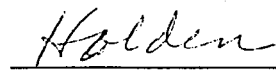
6. Page 1, line 23.

Following: "offense"

Strike: ", EXCEPT DAMAGES RESULTING FROM MEDICAL MALPRACTICE"


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Amd. Coord.
Sec. of Senate


Senator Carrying Bill

601647SC.SRF

7. Page 1, line 24.

Strike: "(1)(B)"

Following: "TO"

Insert: "serious bodily injury or death resulting from negligence
or to damages resulting from medical malpractice,"

8. Page 1, line 25.

Following: "TORT."

Insert: "This subsection does not create an exception from the
dollar limitations provided for in subsection (1)."

9. Page 1, line 26.

Strike: "(2)"

Insert: "(3)"

10. Page 2, lines 1 through 9.

Strike: section 2 in its entirety

Renumber: subsequent sections

-END-

ROLL CALL

DATE _____

3-19-97

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